

United States District Court

for the
Western District of New York

United States of America

v.

Case No. 14-M- 1077

GARY WANNAMACHER

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

Beginning in or about July 2008 and continuing through January 1, 2013, in the Western District of New York, the defendant knowingly and willfully executed, and attempted to execute, a scheme and artifice--

(1) to defraud health care benefit programs, namely Health Now and Independent Health; and

(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, health care benefit programs,

all in connection with the payment of health care benefits, items and services in violation of Title 18, United States Code, Section 1347.

This Criminal Complaint is based on these facts:

☒ Continued on the attached affidavit.

x 
Complainant's signature

DAVID BUDZ, Special Agent
Federal Bureau of Investigations
Printed name and title

Sworn to before me and signed in my presence.

Date: September 15th, 2014

City and State: Buffalo, New York


Judge's signature
LESLIE G. FOSCHIO, U.S. Magistrate Judge
Printed name and title

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

David Budz, being duly sworn, deposes and states as follows:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI"), and have been a Special Agent for approximately twelve years. I am currently assigned to the White Collar Crime Squad and have been assigned to the White Collar Crime Squad for the same period of time. For the past ten years, I have been assigned to specifically investigate Health Care Fraud matters as they relate to violations of Title 18, United States Code, Sections 1035 (False statement in connection with health care matters), 1347 (Health Care Fraud), and Title 42, Section 1320a-7b (Medicare Fraud).

2. In connection with my investigation of Health Care Fraud matters, I am working with the Western New York Health Care Fraud Task Force ("HCFTF"), which is comprised of Federal and State agencies that also investigate the same. I have investigated enterprises and individuals engaged in committing fraud against Government Health Care Programs as well as against private insurance carriers' health care insurance programs. I have been involved with the HCFTF in the investigation of GARY WANNAMACHER, doing business as Spring Creek Athletic Club ("SCAC"), concerning allegations that

WANNAMACHER has submitted false and/or fraudulent claims for health care services to HealthNow/Blue Cross Blue Shield of Western New York ("HN") and Independent Health Association ("IHA").

INTRODUCTION

3. This affidavit is made in support of the issuance of a Criminal Complaint against GARY WANNAMACHER for a violation of Title 18, United States Code, Section 1347, Health Care Fraud.

4. The information contained in this affidavit is based upon my personal knowledge and participation in this investigation, my conversations with other law enforcement officers who have participated in this investigation, interviews with witnesses, and review of documents and other evidence obtained during this investigation. This affidavit does not purport to present all evidence developed during the course of this investigation. Rather, I have set forth only those facts that I believe are necessary to establish probable cause for issuing the requested criminal complaint.

5. As detailed below, GARY WANNAMACHER is the owner/operator of Spring Creek Athletic Club ("SCAC"), a health and fitness club now located in Springville, New York. The investigation has determined that WANNAMACHER is the individual responsible for submitting claims to health insurance companies seeking reimbursement for services provided by SCAC to beneficiaries of health insurance companies. Since April 2011, SCAC has been located at 535 West Main Street, Springville, New York. Prior to that time, SCAC was located at 243 Main Street, Springville, New York.

6. HN and IHA are public or private health-care benefit programs, affecting commerce, under which medical benefits, items or services are provided to individuals, and therefore are health care benefit programs as defined in Title 18, United States Code, Section 24(b).

THE INVESTIGATION

The Silver Sneakers program

7. The Silver Sneakers program has been offered by a number of private health insurance companies in the Western New York area, including HN and IHA. The Silver Sneakers program was undertaken by health insurance companies to enable their beneficiaries to attend programs designed to improve their health. HN and IHA, through third party administrators, contracted with health clubs and other entities, including SCAC, to cover the cost of certain programs or workouts for the beneficiaries of the HN and IHA who are senior citizens. In return, the health clubs and other entities were entitled to receive payments, through third party administrators, from HN and IHA for each HN and IHA beneficiary actually attending or participating in an approved program session. Typically, a beneficiary who took part in the Silver Sneakers program was issued a swipe card by the health insurance plan. Each time a beneficiary attended a Silver Sneakers program at a health club such as SCAC, the swipe card would be used to generate a claim, via a third party administrator, to the insurance plan by the health club. The beneficiary must actually have attended a session to entitle the health club to submit a claim for re-imbursement.

pursuant to the terms of the Silver Sneakers program. Within the last year, IHA began offering a program called Healthy Benefits, under which beneficiaries are still able to use gyms that have the Silver Sneakers program.

8. HN and IHA contract with companies known as third party administrators to handle the processing of claims for the Silver Sneakers program. Each claim to HN and IHA for reimbursement under the Silver Sneakers Program is sent by the provider, in this case SCAC, to the third party administrator. The third party administrator processes the claim and arranges for the payment of the claim by HN and IHA to the provider.

The Criminal Scheme

9. This investigation originated from a complaint by a citizen who alleged that WANNAMACHER, doing business as SCAC, 535 West Main Street, Springville, New York, was fraudulently billing insurance companies relative to the Silver Sneakers program. The citizen's complaint alleged that WANNAMACHER repeatedly submitted claims to health insurance companies (through third party administrators) seeking reimbursement under the Silver Sneakers program for services for multiple beneficiaries which were never rendered by SCAC. According to the citizen's complaint, this was accomplished by swiping the Silver Sneakers membership cards at SCAC for classes even though the beneficiary was not at the particular classes.

10. Investigators requested data from HN and IHA of claims submitted by SCAC for services purportedly provided to their beneficiaries under the Silver Sneakers program. After the data was received from HN and IHA, the investigation was able to identify the individual beneficiaries WANNAMACHER claimed attended sessions at the SCAC. Investigators interviewed a number of beneficiaries regarding their usage of sessions at the SCAC. Further, the claim data enabled the investigation to determine the potential scope of the criminal activity.

11. In interviews, eleven individuals who were beneficiaries of a HN or IHA health insurance plan and participants in the Silver Sneakers program reported that they had not attended all or some of the sessions that were attributed to them in the SCAC claim data. These individuals knew that they had not attended specific sessions for which a claim was generated because, for example, they were out of town on the date(s) in question, had never attended a session at the SCAC after it moved locations in April 2011, or had not attended any sessions after signing up. During their interviews, several individuals noted that WANNAMACHER kept their membership card or a copy thereof at the SCAC. In total, investigators identified 1,747 sessions purportedly attended by these eleven individuals that are fraudulent. The claims submitted by SCAC to IHA and HN for these 1,747 sessions are, therefore, fraudulent. The total amount paid out by HN and IHA for these claims was approximately \$6,984.76.


12. Janette Siuta, an employee with IHA, Special Investigations Unit, was interviewed on April 29, 2013. Siuta explained that IHA's system notes that it was billed by SCAC for sessions purportedly attended by two members after their dates of death. The claims submitted by SCAC to IHA, through the third party administrator, for the 20 sessions purportedly attended these two members after their death, are obviously fraudulent. The total amount paid out by IHA for these claims was approximately \$94.40.

13. On February 5, 2013, Sue Schmidt, an employee with HN, Special Investigative Unit, was interviewed. Schmidt provided a summary report of an audit, with two interviews of WANNAMACHER that were conducted by HN on November 25, 2008, and December 5, 2008. According to Schmidt, the audit centered on the submission of claims to HN for classes that club members did not actually attend. WANNAMACHER could not produce sign in sheets for the classes or class rosters.

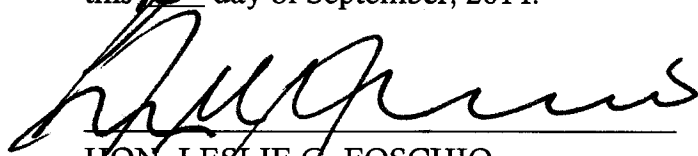
14. Based on the foregoing, GARY WANNAMACHER, doing business as Spring Creek Athletic Club, knowingly and willfully submitted no less than 1767 fraudulent billings for health care services to HN and IHA in order to fraudulently obtain reimbursement of approximately \$7,079.16 from these health care benefit programs and their third party administrators.

WHEREFORE, I respectfully submit that there is probable cause to believe that beginning in or about July 2008, and continuing through January 1, 2013, GARY WANNAMACHER knowingly and willfully executed, and attempted to execute, a scheme and artifice-- (1) to defraud health care benefit programs, namely Health Now and

Independent Health; and (2) to obtain by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, health care benefit programs, namely Health Now and Independent Health, all in connection with the payment for health care benefits, items and services, in violation of Title 18, United States Code, Section 1347. I respectfully request that a Criminal Complaint in the form annexed be issued.


DAVID BUDZ
Special Agent
Federal Bureau of Investigation

Sworn to and subscribed to before
this 13th day of September, 2014.


HON. LESLIE G. FOSCHIO
United States Magistrate Judge